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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 758

GEORGE D. QUIGLEY AND SAFEWAY TRAILS, INC.,
Petitioners,

v.

PUBLIC SERVICE COMMISSION OF MARYLAND,
PENNSYLVANIA GREYHOUND LINES, INC.,
A CORPORATION, AND

CAPITAL TRANSIT COMPANY,
A CORPORATION.

BRIEF OF THE PUBLIC SERVICE COMMISSION OF MARYLAND AND PENNSYLVANIA GREYHOUND LINES, INC., A CORPORATION, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND.

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STATEMENT OF CASE

Greyhound is a common carrier of passengers by motor bus in intrastate and interstate commerce in and through the State of Maryland (R. 18, 33, 73). Among the services rendered by Greyhound is the transportation of passengers intrastate along the U. S. Route No. 1 (Washington Boulevard) between Baltimore City and the Maryland-District of Columbia line. It had been rendering this service sub-

ject to the direction, control and supervision of the Public Service Commission of Maryland prior to and on June 1, 1942 (R. 8, 18-19-33, 74).

On that date Greyhound, at the demand of the Office of Defense Transportation made of common carriers generally in furtherance of a national plan to conserve fuel, tires and equipment in the war effort, agreed to reduce its schedules and mileage, and to share and coordinate its local operating rights along the Washington Boulevard with Safeway (an interstate common carrier of passengers by motor bus between New York City, N. Y. and the District of Columbia, via Baltimore) under an arrangement allocating frequency of service and requiring interchangeability of tickets (Special Order O. D. T. No. B-1). Safeway on its part agreed to refrain from applying to the Commission for such local operating rights until the lapse of one year from the termination of the agreement, which was to remain in effect for the duration of the war emergency. On October 1, 1945, the war emergency having ended, the *status quo ante bellum* was restored with the authority and consent of the Office of Defense Transportation and the Commission. Thereafter, Greyhound expanded its intrastate service on the Baltimore-Washington run to provide more than double the mileage necessary to replace the service of Safeway during the period of coordination (R. 7, 15-17, 19-20, 33-34).

On May 1, 1946, Quigley petitioned the Commission for an order directing Safeway to render local passenger bus service along the said Boulevard on the alleged grounds that the service being provided by Greyhound was inadequate and that the public convenience required the additional service of Safeway. Quigley's petition did not show any interest in obtaining more or better service, but only

in obtaining the service of Safeway. He made no request for an expansion or improvement of the existing service of Greyhound (R. 20, 41-43).

On October 1, 1946, Safeway filed an application with the Commission for authority to operate a local passenger motor bus service along the said Boulevard, which would duplicate the local service rendered by Greyhound. Safeway operates its lines between New York and Washington, D. C., and the Commission has heretofore granted it the right to transport passengers from Baltimore City to any point southwest of Hyattsville, Maryland, along its route to Washington and *vice versa*, with the restriction, however, that no passenger may be carried whose points of origin and destination are both between those places. Since Greyhound and Safeway follow different routes into Washington, D. C. after passing Hyattsville, the local service rendered by each along their respective Baltimore-Washington runs has not been duplicatory, except during the period of coordination (R. 3, 12-16).

Greyhound and others appeared before the Commission in opposition to Quigley's petition and the application of Safeway. The cases made out by the petition (Commission Case No. 4795) and the application (Commission Case No. 4805) were consolidated by the Commission for hearing and heard during seven full days in the period between October 8, 1946 and November 13, 1946. Much testimony and numerous exhibits were produced by all parties to the hearing, and no contention is made that Safeway and Quigley were in any wise restricted in the presentation of their cases or in cross-examination of opposition witnesses (R. 4, 15-16, 21, 33).

On January 22, 1947, the Commission, after due deliberation, issued its Order No. 43245 dismissing the petition and application, and finding—

> "* * * that the public welfare and convenience do not require the removal or modification of the aforesaid restrictions [against intrastate operations by Safeway along the Washington Boulevard], the Commission hereby expressly confirming the conclusions reached by it in similar proceedings in 1940 as expressed in its opinion filed on June 20th, 1940, the Commission now being of the opinion as it was then, that should the public convenience require the operation of more trips than are now operated by existing carriers authorized to provide local service along the route and in the areas involved, the need could be met more effectively by requiring that such additional needed service be furnished by the carriers that are already authorized to provide local service" (R. 14-16).

Thereupon, Quigley alone applied to the Commission for rehearing and the Commission by its Order No. 43304 entered February 12, 1947, reopened his case and set it for rehearing on February 24, 1947, to provide an opportunity for parties of record to offer oral argument only (R. 5, 17). The rehearing was duly had, all parties before the Commission participating, and on March 12, 1947, the Commission (Commissioner Jones dissenting) issued its Order No. 43377 reaffirming its Order No. 43245 and finding

> "* * * after due consideration of the oral argument that was offered as aforesaid, that no change in or modification of its said Order No. 43245 is justified, particularly as it appears from reports of observations made by members of the Commission's staff that the intrastate motor bus service along the Washington Boulevard between Baltimore and the Maryland-District of Columbia Line, which has been the subject of controversy in this case, is adequate * * *" (R. 17).

The "similar proceedings in 1940" mentioned in the Commission's Order No. 43245 are reported in *Re Capital Transit Company, et al.* Case Nos. 4372, 4374, 4375, 4377, 4378, 31 P. S. C. Md. 117. This involved an application by the Capital Transit Company to the Commission for authority to discontinue the exclusive local passenger motor bus service then operated by Capital between Laurel, Maryland, and College Park, Maryland, under the authority of permits previously issued by the Commission. At about the same time both Greyhound and Safeway separately applied to the Commission for the authority to carry on the service Capital desired to abandon, and Safeway further applied for local passenger motor bus service rights between Baltimore and Laurel, Maryland, a service then being rendered only by Greyhound. In its Opinion and Order No. 35890, filed June 20, 1940, the Commission granted the applications of Capital and Greyhound, and dismissed both applications of Safeway pursuant to the following findings:

> "Pennsylvania Greyhound now operates unrestricted intrastate service between Baltimore and Laurel and the only restriction upon its service on any portion of the route between Baltimore and Washington is that passengers shall not be transported whose points of origin and destination are both located between Laurel and the District of Columbia Line and said restriction was imposed for protection of the predecessor of Capital Transit Company. Greyhound contended that it is now furnishing adequate and convenient service, subject to said restriction, that it is favorably situated and fully prepared to furnish all the service that may be required between College Park and Laurel, and it vigorously protested the granting of any intrastate rights to Safeway Trails, Inc., between Baltimore and the District of Columbia Line. Schedules and testimony were submitted showing that 26 trips in each direction are operated daily

between Baltimore and Washington by Greyhound, arranged to suit the convenience of local riders, in addition to 21 through trips daily in each direction by buses operating between New York and Washington, of which 18, each way, are available to passengers traveling between Baltimore and Laurel or College Park. Safeway Trails, Inc. operates 17 trips daily from Baltimore to Washington and 18 trips from Washington to Baltimore in interstate service.

"The Commission finds that the present local service of Pennsylvania Greyhound Lines, Inc., between Baltimore and Laurel is reasonably adequate for present needs and that adequate accommodation of local traffic between Laurel and College Park can best be provided by granting that carrier intrastate privileges between those points. The public would not be benefited by the granting of the privilege to both companies unless the service of the one now engaged in intrastate operation were shown to be inadequate, and the interstate operation of the other carrier could be so scheduled as to supply the deficiencies. These conditions do not exist. Should the public convenience require the operation of more trips than now operated by Greyhound, the need could be met more effectively by requiring that carrier to supply the additional service properly coordinated with the present operation." 31 P. S. C. Md. at pp. 121-122 (R. 15-19).

The Petition and Supporting Brief say (at p. 14) that suddenly and without just cause Safeway's intrastate rights were taken from it and the exclusive franchise given to Greyhound, its interstate competitor. This is most misleading. Nothing was done suddenly, and nothing was taken from Safeway. When the O. D. T. declared the emergency need for coordination at an end, the temporary intrastate rights the Commission had permitted Safeway to exercise at the instance of the O. D. T. automatically expired. The expiration of those temporary rights has no

bearing whatever on this case, which originates in proceedings instituted by Safeway a year later to acquire permanent independent, as opposed to temporary coordinated, local operating privileges (R. 7, 12-13, 19-20, 34).

ARGUMENT

No Federal Claims Under The Fourteenth Amendment Were At Any Time Made In The State Courts.

> "In reviewing the judgment of a state court, this Court will not pass upon any federal question not shown by the record to have been raised in the state court or considered there, whether it be one arising under a different or the same clause in the constitution with respect to which other questions are properly presented" (Citations omitted) *People of the State of New York v. Graves,* 300 U. S. 308, 317.

The first three contentions of Petitioners, as set forth in their statement of the questions presented (Petition, p. 2) are that, in the proceedings before the state courts and the commission, they were deprived of their rights under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States. Notwithstanding that Petitioners had ample and adequate opportunity to make these contentions in the state courts, they are raised in this Court for the first time. The cases originated in separate bills of complaint filed by Safeway and Quigley to set aside the orders of the Commission. In neither of the bills is there any suggestion of invoking the Fourteenth Amendment to the Constitution of the United States. The bills were dismissed on demurrer by the Court of Appeals of Maryland, after which the Petitioners filed motions for reargument, and even at that last stage of the State proceedings, the only federal claim asserted was under the Commerce Clause. All other grounds relied upon were directed solely to questions of State law (R. 109, 110, 118, 123, 124).

Moreover, Petitioners have not complied with Rules 12 and 38, paragraph 2, of the Revised Rules of the Supreme Court of the United States requiring the petition for certiorari, if review of a state court judgment is sought, to "specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them * * *; and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary thereof, * * * as will support the assertion that the rulings of the court were of a nature to bring the case within the statutory provision believed to confer jurisdiction on this court."

The Due Process And Equal Protection Of The Law Clauses Of The 14th Amendment To The Constitution Of The United States Have Not Been Violated.

Even had Petitioners raised the Federal questions respecting due process and equal protection of the law in the proceedings below, thereby qualifying to urge those considerations in this Court, their claims would be without merit.

No question as to the validity of state procedure under state laws and state constitution can be raised in a case coming to the United States Supreme Court from state courts. The final judgment of the state court must be taken as determinative that the procedure actually adopted satisfies all state requirements. Questions of correct state practice are not reviewable in the Supreme Court unless federal rights are asserted. *United Gas Public Service Company v. Texas*, 303 U. S. 123; rehearing denied 303 U. S. 667. It follows,

therefore, that unless there is asserted by these petitioners some federal right which has been prejudiced by the procedure followed before the Maryland Commission and in the Maryland courts, their claim of denial of due process is beyond the jurisdiction of this Court.

The Fourteenth Amendment provides only that *legal rights* shall not be impaired by arbitrary action of a state or its agencies. No company or individual has *a legal right* to obtain a franchise authorizing the use of the public highways of a state for the purpose of conducting a business thereon within the state itself. The mere fact that the applicant for such a franchise is also conducting an interstate business over those highways does not alter the basic principle, provided only that the action of the State in regulating the use to which its highways are put does not constitute an undue burden upon interstate commerce. The principle is cogently set forth in a case heavily relied upon by Petitioners (*Buck v. Kuykendall*, 267 U. S. 307). At page 314 of its opinion the court said:

> "The right to travel interstate by auto vehicle upon the public highways may be a privilege or immunity of citizens of the United States. Compare *Crandall v. Nevada*, 6 Wall. 35. A citizen may have, under the 14th Amendment, the right to travel and transport his property upon them by auto vehicle. But he has no right to make the highways his place of business by using them as a common carrier for hire. Such use is a privilege which may be granted or withheld by the state in its discretion, without violating either the due process clause or the equal protection clause. *Packard v. Banton*, 264 U. S. 140."

The facts in *Interstate Busses Corp. v. Holyoke Street R. Co.*, 273 U. S. 45, are very similar to those in the case at bar. There an interstate carrier of passengers by motor bus had refused to abide by the law of Massachusetts which prohibited it from engaging in intrastate transportation along its route. The carrier sought no franchise from the State but contended that the statute was in violation of the due process and equal protection clauses of the Fourteenth Amendment. Concerning that contention the Supreme Court said at pages 51 and 52 of its opinion:

> "Appellant may not evade the Act by the mere linking of its intrastate transportation to its interstate or by the unnecessary transportation of both classes by means of the same instrumentalities and employees.
>
> * * * * * *
>
> "There is no support for the contention that the enforcement of the Act deprives it of its property without due process of law. Undoubtedly, the State has power in the public interest reasonably to control and regulate the use of its highways so long as it does not directly burden or interfere with interstate commerce."

There has been no violation of either the due process clause or the equal protection clause and the petition is without merit in that respect and should be dismissed.

The Federal Claim Made Under The Commerce Clause Is Frivolous And Insubstantial.

Petitioners say that the refusal of the Public Service Commission of Maryland to permit Safeway to engage in the local business desired constitutes an undue burden on interstate commerce, because it has facilities which are available for local traffic and it needs the revenue. Petitioners' argument seems to be that a state may not prohibit a necessitous interstate carrier, with available facili-

ties, from serving local traffic, regardless of the impact upon local conditions. In the Brief in Support of the Petition, it is said that "Safeway had increased its investment in equipment and personnel," as a result of the coordinated service, and that "Safeway has been losing approximately $10,000 per month" (p. 16). There is no support in the record for the first of these statements, and the allegation in the bill of complaint cited in support of the second is that the termination of Safeway's local service "resulted in a decline in *revenues* equal to $10,000 a month" (R. 9). Even if Safeway had increased its facilities to render a temporary (and profitable R. 34) wartime service and had sustained a loss in revenue after the termination of the rights granted to it temporarily to operate locally, it would hardly follow that a refusal of authority to make use of such expanded facilities one year after the expiration of the emergency would constitute such a burden upon interstate commerce as to contravene the commerce clause. Surely, in special emergencies, the States may grant temporary local rights to interstate carriers without obligation to grant permanent rights when the special conditions no longer prevail.

Article I, Section 8, Clause 3 gives to the Congress of the United States the power

> "To regulate Commerce * * * among the several states, * * *."

In *Illinois Central R. Co. v. Public Utilities Commission of Illinois*, 245 U. S. 493, at 510, the Supreme Court said:

> "In construing Federal statutes enacted under the power conferred by the commerce clause of the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a state, even where that may be done, unless and except so far as, its purpose to do so is clearly manifested."

Far from manifesting any intent to invade the province of the States, the Congress of the United States specifically provided that the Motor Carrier Act of 1935 should not be so construed. By Section 202 (b) thereof (49 U. S. C. 302 (b)), it is provided:

> "Nothing in this chapter shall be construed * * * to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof."

This court in *Bush v. Maloy*, 267 U. S. 317, and *Buck v. Kuykendall*, supra, has held that interstate motor carriers may not be excluded from *interstate* operations by the various states. On the other hand, it has upheld the exclusive power of the states to determine by whom and under what circumstances their roads shall be used in intrastate commerce. *Interstate Busses Corp. v. Holyoke Street Railway Co., supra; Eichholz v. Public Service Commission*, 306 U. S. 268.

The asserted right under the commerce clause is so wanting in foundation and so insubstantial as to be devoid of all merit, and frivolous, and the petition should therefore be denied for want of a substantial federal question.

Respectfully submitted,

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